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13 UNITED STATES DISTRICT COURT  
14 DISTRICT OF NEVADA  
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16 DARLENE THOMPSON, ) 3:07-cv-00011-HDM-VPC  
17 Plaintiff, )  
18 vs. ) ORDER  
19 MICHAEL J. ASTRUE, )  
20 Defendant. )  
21 \_\_\_\_\_ )

22 Before the court is the plaintiff Darlene Thompson's  
23 ("plaintiff") motion for reversal of the Social Security  
24 Administration's ("SSA") decision denying her application for  
25 supplemental social security income ("SSI") benefits (#12). The  
26 defendant has responded and made a cross-motion to affirm the SSA  
27 decision (#15). The plaintiff has replied (#16).

28 Plaintiff filed an application for SSI on March 13, 2003,

1 alleging disability based on her severe bi-polar disorder with  
2 anxiety and depression. (A.R. 50-53, 99, 102). Her claim was  
3 denied on October 27, 2003, (A.R. 39-41), and her request for  
4 reconsideration was denied on March 24, 2004, (A.R. 42-47).  
5 Plaintiff then requested a hearing, which was conducted before the  
6 administrative law judge ("ALJ") on February 10, 2005. (A.R. 32-  
7 33, 48). Plaintiff was unrepresented by counsel at the hearing.  
8 (A.R. 214-17). On June 18, 2005, the ALJ issued his decision  
9 denying plaintiff's claim for SSI benefits. (A.R. 25). Plaintiff  
10 appealed on August 15, 2005. (A.R. 23). The Appeals Council  
11 denied plaintiff's request for review on November 13, 2006. (A.R.  
12 5-8).

13 An ALJ's determination of a social security claim must be  
14 upheld if (1) it applied the proper legal standard, and (2) there  
15 is substantial evidence in the record as a whole to support the  
16 decision. *Webb v. Barnhart*, 433 F.3d 683, 686 (9th Cir. 2005);  
17 *Smolen v. Chater*, 80 F.3d 1273, 1279 (9th Cir. 1996). The ALJ  
18 determines whether a claimant is disabled by following a five-step  
19 sequential process outlined in the regulations. See 20 C.F.R. §  
20 416.920. Where a mental impairment is alleged, the ALJ is also to  
21 employ a supplemental framework, the psychiatric review technique.  
22 *Id.* § 416.920a. Under § 416.920a, the ALJ must rate the claimant's  
23 degree of functional limitation in four broad functional areas: (1)  
24 activities of daily living; (2) social functioning; (3)  
25 concentration, persistence, or pace; and (4) episodes of  
26 decompensation. *Id.* §§ 416.920a(b)(2), (c)(3). Section 416.920a  
27 further states that the ALJ "will document application of the  
28 technique in the decision" and that "the written decision must

1 incorporate the pertinent findings and conclusions based on the  
2 technique . . . . [and] must include a specific finding as to the  
3 degree of limitation in each of the [four broad] functional areas .  
4 . . . ." *Id.* § 416.920a(e); see also *Selassie v. Barnhart*, 203 Fed.  
5 App'x 174, 176 (9th Cir. 2006) (unpublished disposition); *Rochin v.*  
6 *Barnhart*, 204 Fed. App'x 601, 603 (9th Cir. 2006) (unpublished  
7 disposition); *Dykstra v. Barnhart*, 94 Fed. App'x 449, 450 (9th Cir.  
8 2004); *Taylor v. Massanari*, 19 Fed. App'x 664, 665 (9th Cir. 2001);  
9 *Connor v. Barnhart*, 82 Fed. App'x 600, 601 (9th Cir. 2003); *Behn v.*  
10 *Barnhart*, 463 F. Supp. 2d 1043 (C.D. Cal. 2006).

11 An ALJ in a social security case also has an "independent duty  
12 to fully and fairly develop the record and to assure that the  
13 claimant's interests are considered," particularly when the  
14 claimant is unrepresented. *Tonapetyan v. Halter*, 242 F.3d 1144,  
15 1150 (9th Cir. 2001) (quoting *Smolen v. Chater*, 80 F.3d 1273, 1288  
16 (9th Cir. 1996)) (internal quotation marks omitted). This  
17 affirmative duty to supplement the record is triggered where the  
18 ALJ finds the record to be incomplete or inadequate, where the  
19 evidence is ambiguous, or where the ALJ relies on an expert opinion  
20 that is based on ambiguous evidence. *Webb v. Barnhart*, 433 F.3d  
21 683, 687 (9th Cir. 2005). The duty is heightened "where the  
22 claimant may be mentally ill and thus unable to protect her own  
23 interests." *Tonapetyan*, 242 F.3d at 1150.

24 Plaintiff argues the ALJ erred by failing to document the  
25 application of the psychiatric review technique in his decision.  
26 The ALJ's decision does not contain specific findings as to the  
27 degree of plaintiff's limitation in each of the four of the broad  
28 functional areas as required by § 416.920a(e). Rather, the ALJ

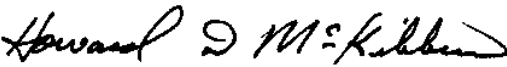
1 simply restated the findings of Drs. Doornink and Burke as to their  
2 opinions of plaintiff's limitations and found that plaintiff did  
3 not have marked limitations in three of the four functional areas.  
4 The ALJ failed to make a specific finding as to plaintiff's degree  
5 of limitation with respect to episodes of decompensation as  
6 mandated by § 416.920(e).

7 Plaintiff also argues that the ALJ erred by failing to fully  
8 develop the record. Specifically, plaintiff claims that the ALJ  
9 did not supplement the record after he determined that the opinion  
10 of her treating psychologist, Dr. Steve Larsen, was not supported  
11 by adequate medical evidence. This lack of supporting medical  
12 evidence was one of the reasons the ALJ did not give any weight to  
13 Dr. Larsen's opinion. While the record reflects that the ALJ,  
14 through the Nevada Bureau of Disability Adjudication, requested and  
15 reviewed plaintiff's records from Elko Community Mental Health  
16 Center for the time period covering Dr. Larsen's treatment of  
17 plaintiff, it does not reflect that he attempted to obtain any  
18 records specific to Dr. Larsen or that he contacted Dr. Larsen for  
19 additional records or to ascertain the basis of his opinion. (See  
20 A.R. 180). It is unclear from the current record whether any such  
21 medical records exist, and whether they would be located at Elko  
22 Health Center or be in Dr. Larsen's possession. The ALJ had a duty  
23 to at least attempt to secure records from Elko Health Center  
24 relating specifically to the seven exams of the plaintiff by Dr.  
25 Larsen between March 2004 and June 2004, and if such records did  
26 not exist at Elko Health Center, the ALJ should have made a  
27 reasonable effort to contact Dr. Larsen to obtain whatever records  
28 he may have had or to learn where any records might have been

1 located in relation to Dr. Larsen's examinations of the plaintiff.  
2 Because the plaintiff was *pro se* before he ALJ and has alleged  
3 mental illness, the failure of the ALJ to make specific findings as  
4 required by § 416.920e and to fully develop the record in the  
5 context of this case requires a remand.

6 Accordingly, the decision of the ALJ is reversed and this  
7 action is remanded for further proceedings consistent with this  
8 opinion.

9 DATED: This 20th day of May, 2008.

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12 UNITED STATES DISTRICT JUDGE  
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